

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 1939/2017

Mohd. Salman

----Petitioner

Versus

State Of Rajasthan Through PP, Rajasthan High Court, Jaipur.

----Respondent

For Petitioner(s) : Mr. Trideep Pais, Sr. Adv. Assisted by
Ms. Seema Misra, Adv., Mr. Vibhor
Jain, Mr. Syed Saddat Ali

For Respondent(s) : Mr. Rajesh Mehrishi, AAG, assisted by
Mr. Devanshu Saini

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

RESERVED ON

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03/11/2022

PRONOUNCED ON

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29/03/2023

(Per Hon'ble Pankaj Bhandari, J.)

1. Accused Mohammad Salman has preferred this Revision Petition against the order dated 15.04.2014 passed by the District & Sessions Judge, Jaipur Metropolitan, Jaipur in Criminal Appeal No.252/2014, whereby learned District & Sessions Judge set aside the order dated 12.03.2014 passed by the learned Juvenile Justice Board, Jaipur Metropolitan, Jaipur in Criminal Miscellaneous Case No.23/2013 in FIR No.119/2008, Police Station, Kotwali, Jaipur, by which petitioner was held juvenile on the basis of his school certificate.

2. Succinctly stated the facts of the case are that Jaipur Bomb Blast took place on 13.05.2008, accused petitioner was arrested

by A.T.S., U.P. on 05.03.2010 and was arrested in the present Sessions Case on 23.11.2010. Accused had placed before the Court below his Board Certificate, as per which he was a minor on the date of incident. The accused raised the question of juvenility before the Chief Metropolitan Magistrate. The Chief Metropolitan Magistrate vide order dated 21.06.2011 held the accused Salman to be aged more than 18 years. The accused preferred an appeal under Section 52 of the Juvenile Justice Act, 2000 (hereinafter referred to as 'the Act of 2000') before the learned Sessions Judge. Learned Sessions Judge vide order dated 17.10.2011 set aside the order dated 21.06.2011 and directed the accused to raise the question of juvenility before the Special Judge, Jaipur Bomb Blasts Cases. A revision petition was preferred by the State as well as accused Salman before the High Court, which was decided by the High Court on 17.05.2012. The High Court set aside the order of the Sessions Judge dated 17.10.2011 and remanded the case back to the Sessions Judge to decide it in accordance with law. Learned Sessions Judge thereafter vide order dated 11.02.2013 remanded the case back to the Chief Metropolitan Magistrate and directed the Chief Metropolitan Magistrate to decide the application under Section 12 of the Act of 2000 in accordance with Section 2(g) of the Act of 2000. The Juvenile Justice Board thereafter vide order dated 12.03.2014 held accused Salman to be a juvenile in conflict with law. Aggrieved by the said order, State of Rajasthan preferred a criminal appeal before the Sessions Judge. The Sessions Judge vide order dated 15.04.2014 set aside the order of the Juvenile Justice Board, aggrieved by which, accused Salman has preferred the present criminal revision.

3. It is contended by Mr. Trideep Pais, Senior Counsel appearing for accused Salman in S.B. Criminal Revision Petition No.1939 of 2017 that question of juvenility can be raised before any Court and even in an application moved under Section 12 of the Act of 2000 seeking bail, the Court has to come to the conclusion that the accused is a juvenile and then alone the Court can grant a bail under Section 12 of the Act of 2000. It is also contended that it is not necessary to move an application under Section 7-A of the Act of 2000 for getting the age determined, as when a child is produced before the Juvenile Justice Court, it is the paramount duty of the Juvenile Justice Board to first determine whether the child produced before the Juvenile Justice Board is a child or not. A finding arrived at by the Juvenile Justice Board after considering the entire evidence cannot be said to be faulted on technical grounds when the Juvenile Justice Board has been enacted for the benefit of a juvenile.

4. It is further contended that the Juvenile Justice Board has summoned the Principal and Teachers of the school where Salman has studied. The Board Certificate is a document, which has to be relied upon in view of Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 (hereinafter referred to as "the Rules of 2007"). It is also contended that merely because there is a difference in age as mentioned in the Board Certificate and the school first attended, the Juvenile Justice Board was not competent to call for the report from the Medical Board with regard to the age of juvenile, for the very reason that the date of birth as mentioned in the school first attended is '09.02.1992' whereas, in the Board Certificate, the date of birth is mentioned as '03.10.1992'.

5. It is argued that in either case, the accused was a juvenile on the date of alleged bomb blasts i.e. 13.05.2008. In case his date of birth as mentioned in the school first attended is considered, he was of age 16 years and 3 months whereas, if the date mentioned in the Board Certificate is considered, he was aged 15 years and 7 months. There was thus no justification for the Juvenile Justice Board to call for the Medical Report. It is also argued that as per Rule 12 of the Rules of 2007, if a Board Certificate is available, the Court has to rely upon it; if the Board Certificate is not available, then the Court has to rely upon the documents pertaining to the school first attended; in case both are not available, then on the Birth Certificate issued by the Municipality; and in case none of the above is available, then only the child is to be sent for medical examination by a Medical Board.

6. It is contended that in the present case, Board Certificate was available. A bare perusal of the same would reveal that Salman was aged 15 years and 7 months at the time of alleged incident, hence, he could not have been tried as an adult. It is argued that even if, the date of birth mentioned in the Board Certificate is not considered, then also he was aged 16 years and 3 months, if the age as mentioned in the school first attended is considered. It is also contended that there was no material on record to come to the conclusion that the Board Certificate was forged, the date of birth as mentioned in the school register was forged and therefore, the Juvenile Justice Board has correctly come to the conclusion that Salman was a minor at the time of the alleged incident. There was thus no justification for the learned Sessions Judge to set aside the order passed by the Juvenile Justice Board.

7. It is next contended by the counsel for Salman that there are varying medical reports with regard to the age of Salman. As per the report initially submitted by the Medical Board, Salman at the time of alleged incident was above 21 years as on 21.03.2011. Considering the date of incident as 13.05.2008, he was around 18 years at the time of the alleged incident. It is contended that the doctor has admitted in his cross-examination that there can be a difference of a year in the age as arrived at by him in the medical examination. It is also contended that the Act of 2000 provides that the lower age as mentioned in the report can further be reduced by a year or two to arrive at the correct age of the juvenile. It is further contended that even if, the report first submitted is considered, Salman was a juvenile at the time of the alleged incident.

8. Counsel for the accused Salman has placed certain additional documents on record. The additional documents pertain to the charge-sheet filed on 11.12.2008 at Ahmedabad, charge-sheet filed at Lalkothi, Jaipur on 16.09.2019 and FIR No.121/2020, which pertain to the defused bomb at Jaipur where the age of Salman is mentioned as 29 years. It is also contended that from all the above charge-sheets, it is revealed that accused Salman was below 18 years of age on 13.05.2008, the alleged date of the blasts.

9. It is contended by the counsel for petitioner that accused Salman as per the date of birth certificate produced before the Juvenile Justice Board was a minor at the time of alleged incident. In this regard, witnesses were produced on behalf of the petitioner. Ishrat Jahan (PW-2) had exhibited the 10th Board Certificate wherein the date of birth of Salman was mentioned as

03.10.1992. Raj Kumar Yadav (PW-4), Principal of Shri Mahaveer Inter College, Sikraur Sehbari, Azamgarh on the basis of Scholar Register (AW-21) has also stated that the date of birth of Salman was 03.10.1992. It is further contended by the counsel that when the 10th Board Certificate was available on record, there was no rhyme or reason to order for a Medical Board to ascertain the age of accused Salman. As per the law laid down by the Apex Court and the provision under the Act of 2000, if a Board Certificate is available, then the age mentioned in it has to be considered to be the age of the person and in this particular case, the Board Certificate of Salman mentioned his date of birth as '03.10.1992', as per which, petitioner Salman had not attained the age of even 16 years at the date of the alleged incident i.e. 13.05.2008.

10. It is contended by counsel that whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused was a juvenile on the date of commission of the offence, the Court shall make an inquiry and take such evidence as may be necessary, so as to determine the age of such person and shall record a finding whether the person is a juvenile or not stating his age as nearly as may be. It is also contended that the Juvenile Justice Board had taken evidence of the parties and after considering the Board Certificate has come to the conclusion that the petitioner was a juvenile at the time of alleged incident and hence, the learned Sessions Judge has erred in setting aside the order passed by the Juvenile Justice Board. It is further contended that petitioner Salman should have been treated as a juvenile and the proceedings against him should have been dropped at the first instance. The conviction of petitioner Salman cannot be sustained for the very reason that he was not treated as a juvenile and was

treated as an adult while deciding the sessions case. It is also contended by the counsel that there was no rhyme or reason to order for the medical examination and the report of the Medical Board cannot be considered for the very reason that as per the report, the age of the petitioner is mentioned above 25 and below 40 years. The variance in the age suggests that the Medical Board could not come to any conclusion with regard to the age of Salman. It is contended that as per the Act of 2000, there was no justification whatsoever to consider the report of the Medical Board and the Juvenile Justice Board had clearly and in unequivocal term come to the conclusion that the petitioner was a juvenile and there was no rhyme or reason for the learned Sessions Judge to quash the order passed by the Juvenile Justice Board. The order passed by the Juvenile Justice Board cannot be said to be in conflict with any of the provisions of the Act of 2000 or the judgments or orders passed by the High Court or Sessions Court.

11. Counsel for petitioner – Salman has placed reliance on *Kulai Ibrahim Versus State*: **(2014) 12 SCC 332**, *Ashwani Kumar Saxena Versus State of M.P.*: **(2012) 9 SCC 750**, *Babla Versus State of Uttarakhand*: **(2012) 8 SCC 800**, *Ram Karan Versus State of Rajasthan*: **2017 SCC OnLine Raj 4169**, *Padam Chand Bundela Versus State of Rajasthan*: **2018 SCC OnLine Raj 2025**, *Bhoop Ram Versus State of Uttar Pradesh*: **(1989) 3 SCC 1**, *Hari Ram Versus State of Rajasthan*: **(2009) 13 SCC 211**, *Umesh Chandra Versus State of Rajasthan*: **(1982) 2 SCC 202** and *Ghudaram Versus State of Rajasthan*: **WLC 2008 (Raj.) UC 702**. Counsel has also placed reliance on *Vikram Saini Versus State of Rajasthan & Anr.*: **2011 SCC OnLine Raj 2815** to substantiate

that even when a bail application is being decided under Section 12 of the Act of 2000, it requires detailed inquiry into juvenility claim.

12. Counsel for petitioner – Salman has also placed reliance on *Mohan Mali & Anr. Versus State of M.P.*: **(2010) 6 SCC 669**, *Ashok Kumar Mehra & Anr. Versus State of Punjab & Ors.*: **(2019) 6 SCC 132**, *Surabuddin Versus State of West Bengal*: **2019 SCC OnLine Cal 2378**, *Rajiv Alias Kaushal Kishore Versus State of U.P.*: **2015 SCC OnLine All 4187**, *Jabar Singh Versus Dinesh*: **(2010) 3 SCC 757**. Reliance is also placed on *Mohd. Idris Versus State*: **2007 (2) RCC 580**, *Babloo Pasi Versus State of Jharkhand*: **(2008) 13 SCC 133**, *Surendra Kumar Versus State of Rajasthan*: **2008 SCC OnLine Raj 138** and *Sri Ganesh Versus State of T.N.*: **(2017) 3 SCC 280**.

13. Learned Additional Advocate General, Mr. Rajesh Mehrishi, appearing for the State has vehemently opposed the revision petition. It is contended that the Juvenile Justice Board was not competent to determine the question of juvenility of Salman for the very reason that no application under Section 7-A of the Act of 2000 was filed by Salman. It is also contended that learned Sessions Judge has not committed any illegality in exercising its revisional powers. It is further contended that there is difference of age as mentioned in the school register and in the Board Certificate and from the statement of mother of Salman, it is revealed that the place of birth is also varying. Thus, the Juvenile Justice Board was competent to call for the report from the Medical Board.

14. It is further contended by learned Additional Advocate General that the Juvenile Justice Board did not afford any

opportunity to the State to cross-examine the witnesses and the entire proceedings were conducted at the back of the State and thus, the question of determination of juvenility of Salman cannot be read against the State. With regard to the additional documents submitted on behalf of accused Salman, it is contended that these documents cannot be taken at the stage of revision and if the same are to be taken as additional evidence, then the State should also be permitted to produce evidence against Salman to establish that Salman was not a juvenile at the time of the alleged bomb blasts. It is also contended that from the different medical reports, it is established that Salman was above the age of 18 years at the time of the alleged incident and thus, the question of juvenility cannot be adjudicated in the present revision petition.

15. It is contended by the learned Additional Advocate General that discrepancies were observed by the Chief Metropolitan Magistrate, Court at Delhi in the documents vide its order dated 05.05.2010. In the mark-sheet issued by the Board of High School, the date of birth was mentioned as 03.10.1992 whereas, in the documents of Municipal Upper Primary English School, Mumbai, the date of birth was mentioned as 09.02.1992. It is also contended that from the statement of the petitioner's mother also, it is not established as to what was the place of birth of the accused. It is further contended that as there were discrepancies in the documents, learned Chief Metropolitan Magistrate, Court at Delhi also directed to conduct the medical examination by the Medical Board of AIIMS. As per the medical report of AIIMS also, the accused was a major at the time of alleged bomb blasts i.e. in 2008.

16. It is contended that the learned Chief Metropolitan Magistrate, Court at Jaipur also vide its order dated 21.06.2011 declared the petitioner as an adult on the basis of the medical report of SMS Hospital, as there were discrepancies in the documents reflecting the age of the accused. It is also contended that since there were discrepancies in the Matriculation Certificate and School Certificate with regard to the date of birth, it was appropriate for the Court to place reliance on the report of the Medical Board and the learned Sessions Court has not committed any error in setting aside the order passed by the Juvenile Justice Board vide which the accused has been declared to be a juvenile in conflict with the law. It is further contended that the medical examination/reports by various Medical Boards constituted under the law declared the petitioner as an adult and thus, the question of age stands determined by the Medical Boards and the revision petition deserves to be dismissed.

17. It is contended that the Chief Metropolitan Magistrate, Court at Delhi vide its order dated 05.05.2010 while dealing with the application filed by accused Salman for determination of his age, after considering the board certificate and the medical evidence, came to the conclusion that the accused was an adult as on 13.05.2008. That in the order, the Court also considered two documents, which were recovered from the possession of accused Salman including a Health Card issued by the Ministry of Health UAE wherein date of birth of accused Salman was mentioned as 27.05.1985 and a Nepali Passport in the name of Mohammad Vahal bearing the photograph of accused wherein also the date of birth of the accused was mentioned as 27.05.1985. Considering the same, as also the report of the Medical Board, the Chief

Metropolitan Magistrate held the accused to be a major. It is contended that when a Court of competent jurisdiction has decided the question of juvenility of accused Salman, the same cannot be re-agitated in a different proceeding. It is further contended that the doctors, who have been produced before the Juvenile Justice Board, have clearly stated that accused Salman was a major at the time of the bomb blasts. It is also contended that as per the report of Dr. Ananya Goswami and Dr. Sumant Dutta, who were examined by the Juvenile Justice Board, the age as on 21.03.2011 was more than 21 years. Further tests were got conducted to know the exact age, named as clevical and sternal test, as per which the age of the accused was between 25 to 27 years. Co-relating the same with the date of incident, the accused was a major on the date of the alleged incident.

18. Learned Additional Advocate General has placed reliance on *Parag Bhati (Juvenile) through Legal Guardian-Mother-Rajni Bhati Versus State of Uttar Pradesh & Ors.*: **(2016) 2 SCC 744**, *Sanjeev Kumar Gupta Versus State of Uttar Pradesh & Ors.*: **AIR 2019 SC 4364**, *Abuzar Hossain Versus State of West Bengal*: **(2012) 10 SCC 489**, *Om Prakash Versus State of Rajasthan & Ors.*: **(2012) 5 SCC 201**, *The State of Jammu & Kashmir & Ors. Versus Shubam Sangra*: Criminal Appeal No. **1928 of 2012** arising out of S.L.P. (Criminal) No.11220 of 2019.

19. It is contended that the application filed by the accused was under Section 12 of the Act of 2000. Section 12 of the Act of 2000 pertains to seeking of bail and it is only limited to bail of juvenile and no where in the said Section, the power is endorsed upon the Court to determine the juvenility of the person.

20. It is also contended by learned Additional Advocate General that the question of juvenility was also raised by accused Salman before the Delhi Sessions Court and the Delhi Sessions Court held that Salman was not a juvenile, against which Salman preferred a revision petition before the Delhi High Court and the Delhi High Court had left the question open for the Special Court dealing with the bomb blasts case at Delhi. It is contended that Salman was discharged by the Special Court, Delhi and therefore, decision of the Magistrate, who had held Salman to be a major was the final verdict with regard to the juvenility of Salman. Therefore, the Juvenile Justice Board at Jaipur has erred in arriving at the fact that Salman was not a major at the time of bomb blasts at Jaipur.

21. *Contra* to this, it is contended by the learned Senior Advocate appearing for accused Salman that the question of juvenility was kept open for being decided by the Special Court and since the Special Court, Delhi had discharged Salman, it did not had any occasion to determine the question of juvenility of Salman and the order passed by the Metropolitan Magistrate at Delhi who had held that Salman was a major cannot be now read in this case to determine the age of Salman.

22. We have considered the contentions.

23. Before deciding the question of juvenility and for the purpose of disposing the revision petition, it would be appropriate to refer to Section 7A and Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which read as under:

“Section-7A. Procedure to be followed when claim of juvenility is raised before any court.-

1. Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2. If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

Section-12. Bail of juvenile.—

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety 1[or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding

him as may be specified in the order.

Rule-12. Procedure to be followed in determination of Age -

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining:-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

24. It would also be pertinent to refer to the judgments cited by the counsel for accused Salman as well as learned Additional Advocate General. In *Ashwani Kumar Saxena Versus State of MP: (2012) 9 SCC 750* (supra), it was held as under:

"31. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

"32. "Age determination inquiry" contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the

absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal

authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.”

25. In *Hari Ram Versus State of Rajasthan: (2009) 13 SCC 211* (supra), the Apex Court referred to the judgment in *Mohd. Ikram Hussain Versus State of U.P. & Ors.: AIR 1964 SC 1625* where certain copies from the school register were looked into and it was held that the same amounted to evidence under the Evidence Act as the entries in the school registers were made long before the same were used by way of evidence. The Apex Court observed that the said entries were reliable as they have been made *ante litem motam*.

26. In the aforesaid judgment, reference was also made to the decision of the court in *Rajinder Chandra Versus State of Chhattisgarh & Anr.: (2002) 2 SCC 278* wherein the Apex Court inter-alia held that when a claim of juvenility is raised and on the evidence available, two views are possible, the Court should lean in favour of holding the accused to be a juvenile in borderline cases.

27. In *Parag Bhati (Juvenile) through Legal Guardian-Mother-Rajni Bhati Versus State of Uttar Pradesh & Ors.* (supra), it was held that when there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter

attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted, as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

28. In *Sanjeev Kumar Gupta Versus State of Uttar Pradesh & Ors.* (supra), the date of birth as mentioned in the matriculation certificate was 17.12.1998, however, in the school first attended, the date of birth was mentioned as 17.12.1995. In all the documents pertaining to the accused i.e. Aadhaar Card, Driving License issued by the RTO etc., the age was mentioned as 17.12.1995. The Apex Court observed that the date of birth as sent by the school to the Board was mentioned on the basis of the record available with the school, however, from the evidence adduced by the school, it is evident that there was no record pertaining to school last attended wherein the date of birth was mentioned as 17.12.1995 and in those circumstances, the Apex Court held the accused to be a major.

29. In *Abuzar Hossain Versus State of West Bengal* (supra), the Apex Court while dealing with Section 7A of the Act of 2000 held that the claim of juvenility can be raised at any stage and even after the conviction. In *State of Jammu & Kashmir Versus Shubam Sangra* (supra), the Apex Court placed reliance on the report of the Medical Board as the documents evidencing the date of birth did not inspire any confidence.

30. What can be deduced from the above pronouncements is that if a Metric Certificate is available, then the same has to be

relied upon; if there is some dispute with regard to the same or it is not available, then the date of birth mentioned in the school first attended should be considered; in the absence of both, the records as maintained in the municipal register with regard to the date of birth should be considered by the Court and; in absence of all the above three, then only resort has to be made to the medical evidence. It is thus clear that if any of the above three are available, the Court should not resort to the medical opinion. It is also clear that if two views are possible, the view in favour of the accused should be accepted.

31. As far as the facts of the present case are concerned, an application was filed on behalf of accused Mohammad Salman on 11.03.2011 for determination of his age. The said application was decided by the Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur vide its order dated 21.06.2011 and accused Mohammad Salman was considered to be of more than 18 years. An appeal was filed on behalf of Mohammad Salman before the Sessions Judge and the Sessions Judge, Jaipur Metropolitan vide its order dated 11.02.2013 directed the Juvenile Justice Board to decide the application in accordance with Section 2(g) of the Act of 2000 after affording opportunity of hearing to both the parties.

32. It is evident that thereafter the Juvenile Justice Board took evidence of AW-1 to AW-7 and as many as 32 documents were produced before the Juvenile Justice Board. The Juvenile Justice Board after considering the evidence and the documents produced before it came to the conclusion that Salman was a juvenile in conflict with law as on the date of the alleged Jaipur blast. Aggrieved by the said order, the State preferred an appeal before

the learned Sessions Judge. Learned Sessions Judge vide its order dated 15.04.2014 has set aside the order of the Juvenile Justice Board dated 12.03.2014.

33. Learned Sessions Court observed as under:

“In view of the above observations, it can be summarised that firstly in accordance with the order dt. 17-05-12 passed by Hon’ble High Court, as appeal filed u/s 52 of the J.J. Act was not found maintainable, it should have been rejected on this count alone. And secondly, even if the matter was remanded to CMM as per order dt. 11-02-13, the Juvenile Justice Board should not have proceeded to inquire into the matter regarding determination of age of Mohammed Salman. Thus the proceedings undertaken by Juvenile Justice Board was not in line with the order dt. 17-05-12 passed by Hon’ble High Court, so also order dt. 11-02-13 passed by Id. Sessions Judge.

In the result, the impugned order dated 12-03-2014 passed by Id. Juvenile Justice Board is neither in confirmity with the order dt. 11-02-13 of Id. Sessions Judge nor it is in confirmity with the order dt. 17-05-12 passed by Hon’ble Raj. High Court. Thus, it is liable to set aside. Accordingly, the appeal filed on behalf of the State succeeds and the impugned order dt. 12-03-2014 is hereby set aside.”

34. It will be appropriate to refer to the order dated 11.02.2013 of the learned Sessions Judge whereby it was held that the order dated 21.06.2011 was passed in the capacity of Chief Metropolitan Magistrate, which does not come in the category of ‘competent authority’ under Section 2(g) of the Act of 2000. Accordingly, it was also held that the appeal filed under Section 52 of the Act of 2000 is not maintainable in the light of the order dated 17.05.2012 passed by the Hon’ble Rajasthan High Court. So the appeal ought to have been rejected only on the ground of being not maintainable. But anyhow, vide order dated 11.02.2013, the matter was remanded to the Chief Metropolitan Magistrate with

the direction to decide the application filed by Mohammad Salman under Section 12 of the Juvenile Justice Act. It was further held by the learned Sessions Judge that there was no occasion for the Court to hold an inquiry regarding the age of Mohammad Salman and that the Juvenile Justice Board exceeded the directions by holding the inquiry for determination of age of Mohammad Salman.

35. We are of the considered view that the learned Sessions Judge was not competent to make a comment on the earlier order passed by the Sessions Judge dated 11.02.2013 for the very reason that the learned Sessions Judge was not sitting as an appellate court over the order passed by his predecessor. It is also pertinent to note that the order dated 11.02.2013 passed by the learned Sessions Judge was not challenged by the State as well as the accused before the High Court and had thus attained finality. In the order passed by the learned Sessions Judge dated 11.02.2013, a specific direction was given to the Juvenile Justice Board to determine the age of the juvenile. Learned Sessions Judge vide its order dated 15.04.2014 has not taken note of this fact that the order dated 11.02.2013 had attained finality. Learned Sessions Judge has thus committed grave illegality in allowing the appeal filed by the State.

36. As far as question of juvenility is concerned, the material, which was available on record before the Juvenile Justice Board was statement of Ishrat Jahan (AW-2) mother of accused Salman wherein she has stated that Salman was born on 09.02.1992. She has also stated that her *nikah* took place on 02.01.1990 with Sakil Ahmed, father of Salman. Raj Kumar Yadav (AW-4), Principal of

Shree Mahadev Inter College, Sikraur Sahabari Aajamgarh has stated in his evidence that as per Scholar's Register (Exhibit-AW21), he had sent information to the Board with regard to the age of Salman. Witness has also produced the result of Tenth Board (Exhibit-AW22), which was provided to the school by the Board. Board Certificate (Exhibit-AW-18) was got exhibited by mother of Salman (AW-2) wherein the date of birth of Salman is mentioned as 03.10.1992. Hans Amarjeet Kaur (AW-5), Principal of Khair Nagar, Municipal English Upper Primary School No.1, Bandra East, Mumbai has stated in her evidence that Exhibit-A24 is the original admission form. She has stated that form was filled on 02.07.1997. The student was given admission in first class. The record of admission form (Exhibit-A24) was made in the G.R. Register (General Register) (Exhibit-A23). Entry of Salman is at S.No.4631. She has also stated that Salman left the school after completing Class-VII on 28.04.2004 as there was no Class-VIII in the school. The school leaving certificate was also exhibited by the witness as Exhibit-A25. She has clearly stated that as per the school record, the date of birth of Salman was 09.02.1992. Mohammad Sajid (AW-6), who is uncle (*phupha*) of Salman, has stated that marriage of mother of Salman took place in the year 1990 and Salman was born on 09.02.1992. He has stated that he was not very sure about the date of birth and he mentioned the date of birth as 03.10.1992 when he got Salman admitted in Class-IX in Shree Mahadev Inter College. He has exhibited certificate of school (Exhibit-AW18/1) and mark-sheet of Class-X (Exhibit-AW19/1). Shadab Ahmed (AW-7) who is neighbourer of Salman has also deposed that Salman was born on 09.02.1992.

He has stated that marriage of Salman's mother took place on 02.01.1990 and he attended the marriage. The Juvenile Justice Board vide its order dated 12.03.2014 considering the legal propositions settled by the Apex Court and the collected medical evidence, came to the conclusion that the date of birth of Salman is established by the evidence produced before it and there was no necessity of going into the medical evidence and held that Salman was less than 18 years of age on the date of Jaipur Blast i.e. 13.05.2008.

37. We have carefully perused the entire evidence that was adduced before the Juvenile Justice Board. From perusal of the same, it is evident that the date of birth of Salman was 09.02.1992 as was mentioned in the school first attended. The school first attended was the municipal school, the record of which has been produced before the Court below. As per the same, in the admission form and school leaving form, the date of birth of Salman was mentioned as 09.02.1992. From perusal of the same, it is evident that he took admission on 02.07.1997 i.e. at the age of 5 years and studied till Class-VII and left the school on 28.04.2004 as is evident from Exhibit-A24 and Exhibit-A25.

38. There is no reason as to why the statement of Hans Amarjeet Kaur (AW-5), Principal of Municipal English Upper Primary School should be disbelieved, as she has produced the original admission form wherein Salman took admission and the date of birth mentioned in the same is 09.02.1992. As to why there is variance in the date of birth as mentioned in the school first attended and the metric certificate has been made clear by Mohammad Sajid (AW-6), who is uncle of Salman (*phupha*), who

has stated that he got Salman admitted in Sri Mahadev Inter College. He was not having the school record and erroneously he mentioned 03.10.1992 as date of birth of Salman, which was entered by teacher Sarfaraj Ahmed. The variance in date of birth in the school first attended and the metric certificate is thus clearly explained by the witness.

39. As per Rule 12 of the Rules of 2007, the date of birth mentioned in the board certificate is to be given preference. If the same is not available, then the date of birth mentioned in the school first attended is to be considered. Since the reason for the mistake in entry of date of birth in the metric certificate has been explained by Mohammad Sajid (AW-6), the date of birth mentioned in the school first attended i.e. 09.02.1992 can be considered as the actual date of birth of Mohammad Salman. However, even if, the date of birth mentioned in the school first attended or the date of birth mentioned in the metric are to be considered in either case Salman was a juvenile on the date of incident, which is May 2008. However, even if, the date of birth mentioned in the school first attended is to be considered, Salman was aged 16 years and 3 months; however, if the board certificate is to be considered, Salman was aged 15 years and 7 months, in either case, Salman was a juvenile on the date of alleged bomb blasts.

40. Juvenile Justice Board has not committed any illegality or error in determining the age of Salman and considering him to be a minor on the date of the alleged incident. Learned Sessions Judge has clearly exceeded his power by commenting on the order passed by his predecessor and directing the Juvenile Justice Board

to determine the age of Salman in the light of Section 2(g) of the Act of 2000. The said order of learned Sessions Judge was not challenged in appeal by the State or by the accused. Thus, it had attained finality and the Juvenile Justice Board was bound to pass the order in accordance with the directions given by the learned Sessions Judge.

41. The contention of the learned Additional Advocate General that Salman was considered to be a major by the Chief Metropolitan Magistrate, Court Delhi and hence a fresh order cannot be passed regarding his juvenility, cannot be considered for the very reason that the order of Chief Metropolitan Magistrate, Delhi was subject to challenge before the High Court of Delhi and the High Court, Delhi permitted Salman to raise the issue before the concerned Court, which was dealing with the Delhi bomb blast cases. However, the Delhi Bomb Blast Courts discharged Salman and found that he was not involved in the Delhi bomb blast case. The question of juvenility therefore, was not finally decided by the Delhi Courts.

42. The contention of learned Additional Advocate General that from the medical evidence, it is evident that Salman was around 19 years of age at the time of alleged bomb blasts cannot be considered for the sole reason that the medical evidence can only be looked into when the matriculation certificate or school first attended or the municipal certificate with regard to the date of birth is not available as held by Apex Court in *Ashwani Kumar Saxena Versus State of MPI (supra)*. Since the matriculation certificate and the document of date of birth mentioned in the school first attended are available, the said entries have been

made *ante litem motam*, the same amounted to evidence under the Indian Evidence Act as held by the Apex Court in *Hari Ram Versus State of Rajasthan* (supra), hence, we are not inclined to deal with the medical evidence adduced in this case.

43. The contention of the learned Additional Advocate General that the State did not get an opportunity of hearing before the Juvenile Justice Board cannot be considered for the very reason that in the order-sheets itself, the presence of Officers of ATS has been mentioned. From the order-sheets, it is also evident that ATS sought time to produce evidence and the evidence was produced on behalf of ATS. The contention of the learned Additional Advocate General that no application under Section 7A of the Act of 2000 was filed before the Juvenile Justice Board and the Juvenile Justice Board was not competent to decide the question of juvenility is also devoid of any force for the very reason that Section 7A of the Act of 2000 only deals with the procedure and the purpose of adding Section 7A of the Act of 2000 was that the question of juvenility could be raised at any stage and even after the conviction as held by the Apex Court. The question of juvenility was referred to the Juvenile Justice Board by the learned Sessions Judge and the Juvenile Justice Board was directed to decide the question of juvenility by hearing both the parties. Such technical objections cannot be raised at this belated stage, when from the order-sheets, it is evident that the juvenile was produced before the Juvenile Justice Board by the Anti Terror Squad and the Anti Terror Squad also sought time to produce evidence. The genuineness of the board certificate and the school record has not been challenged and made a ground before this Court by learned

Additional Advocate General. In view of the same, we are of the considered view that the learned Sessions Judge has committed grave illegality in allowing the appeal filed by the State. We thus, set aside the order passed by the learned Sessions Judge and the order passed by the Juvenile Justice Board is upheld. Petitioner - Salman is thus, considered to be a juvenile on the date of occurrence of Jaipur bomb blast. The revision petition is accordingly, allowed.

44. All pending applications also stand disposed of.

(SAMEER JAIN),J

(PANKAJ BHANDARI),J

SUNIL SOLANKI /PS



सत्यमेव जयते